

Notice of Allowability

Application No.

09/039,789

Examiner

Arlen Soderquist

Applicant(s)

CARVER ET AL.

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to the Appeal Brief filed March 24, 2004.

2. The allowed claim(s) is/are 27-30, 32, 35, 38 and 40-46.

3. The drawings filed on 16 March 1998 are accepted by the Examiner.

4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of the:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) hereto or 2) to Paper No./Mail Date _____.

(b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
Paper No./Mail Date _____
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____.

Art Unit: 1743

1. The following is an examiner's statement of reasons for allowance: the art of record does not teach or fairly suggest the claimed method and apparatus. The prior rejection on the basis of lack of enablement has been withdrawn for the following reasons. Upon further consideration examiner determined that it would be possible for the claimed invention to be practiced even in a device or method in which there is only one reagent container and a single lysing agent. In claim 27 the selecting step is not required to be performed by the instrument and therefore could be done by the operator based on the input of the species. The only restriction would be when a single reagent container and/or a single lysing agent is used the practice of the claims must allow the advantage found on page 25, line 17 to page 26, line 5 of the instant specification to be obtained. This section of the instant specification is reproduced below with added emphasis.

"Another advantage of the present invention, is that the processing and control unit can automatically optimize sample analysis on a species-by-species basis. The database of the processing and control unit can contain information on the predetermined volumes of the lysing agents for all species encountered in this type of hematology system. Thus, the operator does not need to be concerned with preparing the specific blood/reagent mixture for each type of species being tested. Rather, the operator simply inputs the type of species on the keyboard unit, and the processing and control unit automatically determines the quantities of the lysing agents based on the type of species, and then automatically controls the operation of the pump unit to aspirate the predetermined volumes of lysing agents, and to mix them with the sample/diluent mixture in the mixing cuvette."

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional art relates to processing of nonhuman blood samples for particle or cell counting in veterinary applications, but does not teach the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arlen Soderquist whose current telephone number is (571) 272-1265 as a result of the examiner moving to the new USPTO location. The examiner's schedule is variable between the hours of about 5:30 AM to about 5:00 PM on Monday through Thursday and alternate Fridays.

Art Unit: 1743

A general phone number for the organization to which this application is assigned is (571) 272-1700. The fax phone number to file official papers for this application or proceeding is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



June 3, 2004

ARLEN SODERQUIST
PRIMARY EXAMINER